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September 10, 1999

The Honorable Janet Reno
Attorney General
United States Department of Justice
Washington, D.C. 20530

Re: Subpoenaed Documents Relating to Waco

Dear General Reno:

On September 1, 1999, I issued a subpoena for a number of Justice Department documents relating to the Waco matter. Yesterday, the Justice Department produced the first set of documents responsive to the subpoena. One of the documents in that production raises serious new questions regarding the Department's mishandling of the Waco matter.

The Department has produced to the Committee a September 2, 1999, memo from James G. Touhey, Jr., an attorney in the Department's Torts Branch, to Jeffrey Axelrad, the Director of the Torts Branch. In the memo, Mr. Touhey indicates that he had reviewed a 49-page FBI Laboratory Report and discovered that it mentioned a "fired U.S. Military 40mm shell casing which originally contained a CS gas round." Mr. Touhey, and a colleague at the Torts Branch, Marie Hagen, then determined that the Justice Department possessed multiple copies of the memo, most of which contained all 49 pages. Mr. Touhey then determined, though, that four copies of the document, including the one produced to Congress, did not have the last page of the report, which happened to be the one page mentioning the spent pyrotechnic round. The memo concludes that "it appears that the page on which mention is made of a shell casing for a military CS round and the expended tear gas projectiles was not produced to Congress."

I am, of course, alarmed by this development. It is difficult for me to believe that the Department had multiple copies of a document, produced only one copy of the document to Congress, and then managed to lose the one critical page of the document mentioning the use of pyrotechnic tear gas. Had page 49 of the FBI report been produced to Congress when it was originally requested years ago, it would have cast doubt onto the testimony of a number of Department officials. The Department's failure to produce this

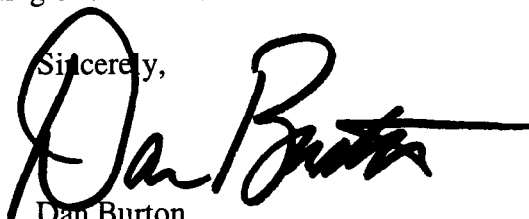
document when it was originally requested raises more questions about whether this Committee was intentionally misled during the original Waco investigation.

I would also note that the Department has still failed to comply with my September 1, 1999, subpoena. The Committee has not yet received a complete copy of the FBI Laboratory Report as it exists in the Department's files. The subpoena requires the production of "any and all originals and identical copies" of the report. Mr. Touhey's memo states that "our database contains multiple copies of the document, most of which contain all 49 pages." I expect that the Department will produce to the Committee all copies of the Laboratory Report, along with a log indicating who possessed copies of the report. In addition, in an effort to discover who at the Department was responsible for this obvious failure, I would like to schedule the following Department employees for interviews: Jeffrey Axelrad, James Touhey, and Marie Hagen. Please make these Department personnel available within the next week.

In conclusion, I have noted with some alarm the heavy-handed tactics employed by the Justice Department in sending U.S. Marshals to take possession of videotapes from the FBI. This tactical show of force – apparently done for the benefit of the media – was followed by statements from yourself and President Clinton that cast aspersions on the Director of the FBI. Now, I learn that at the same time, Justice Department employees had in their possession multiple copies of a document which clearly shows that the FBI did in fact inform the Justice Department of the use of military style tear gas canisters.

You have repeatedly blamed others for the Justice Department's failings in the Waco matter. However, it is clear that you are ultimately responsible for the Department's serious mistakes in this case. Your mishandling of the investigation can be traced to your first internal review of Waco, conducted by Edward S.G. Dennis. While you frequently point to Mr. Dennis' conclusions clearing the Department of any wrongdoing, Mr. Dennis has admitted that his report "was not intended to be a comprehensive, all-encompassing report." When I first read this statement by Mr. Dennis, I could not help but ask why the Attorney General would tolerate a report that was not comprehensive or all-encompassing. I am looking forward to the day when a complete and comprehensive review is conducted. However, it is clear that at the present time, your Justice Department is still engaged in the misleading, politically-motivated behavior that has characterized your handling of the Waco matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Dan Burton", with a long horizontal stroke extending to the right.

Dan Burton
Chairman

cc: The Honorable Henry A. Waxman, Ranking Minority Member